

# NHRS Employer Bulletin Board

News for NHRS Participating Employers - Number 27

December 2004



**Important: Revision of previous instruction concerning military service:** Employers should cease remitting contributions on differential pay to employees who have been called to active service. IRS rules do not permit retirement contributions on any differential pay provided to those employees during the period of military service, so NHRS cannot accept such payments. Any such contributions will be refunded to employers.

RSA 100-A:4-IV and V allow NHRS members to be credited with up to 3 years of service credit without making contributions. The provision applies to members who are called to duty from covered employment and return within a year of discharge.

Upon return to covered employment, the members may send NHRS a copy of discharge papers or other appropriate documentation, in order to receive credit for the service time.

Since employers paying a differential to supplement the military pay are not allowed to remit retirement contributions, NHRS will refund any such payments. The funds will be returned to the employers. The employer will be responsible for returning the members' contributions to the employees.

In order to facilitate the refund process, please send the following information:

**Name, Social Security number and the dates of military service for any personnel for whom contributions have been submitted.**

Please send the information to NHRS 4 Chenell Dr. Concord, NH 03301, Attn. ERS or

E-mail to [dsmith@nhrs.state.nh.us](mailto:dsmith@nhrs.state.nh.us)

Questions? Contact [kmcgovern@nhrs.state.nh.us](mailto:kmcgovern@nhrs.state.nh.us)

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*FYI:*

## IRS Q&A on Military Differential Pay

### **Q-38: What is military differential pay?**

A-38: Differential pay is defined as payments made voluntarily by an employer to represent the difference between the regular salary of an employee called to military active duty and the amount being paid by the military, if the regular salary was higher. For purposes of the following questions and answers, the term differential pay also includes military continuation pay,

active duty differential payments required by state statutes or payments made by certain states or commonwealths that pay a stipend or a set dollar amount to their employees called to military active duty.

**Q-39: If an employer pays military differential pay to an employee called to active duty, are these payments considered wages?**

(Over)

A-39: The employment relationship between the employee and the company was terminated when the worker was called for active military service with the U.S. government or for active service with the state National Guard. Under the circumstances, the payments made by the company to the former employees while they are in military service with the U.S. government or active service with the state National Guard are not "wages" for services performed in "employment" for the companies. These payments, therefore, are not "wages" subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act or to the Collection of Income Tax at Source on Wages.

- **Reference:** IRS Revenue Ruling 69-136

**Q-40: What is the tax treatment of military differential pay?**

A-40: Certain compensation received for active service in a combat zone by members of the Armed Forces of the United States is excludable from gross income. However, this exclusion applies only to compensation

paid by the Armed Forces of the United States to members of the Armed Forces. Compensation paid by other employers (whether private enterprises or governmental entities) to members of the Armed Forces cannot be excluded as combat zone compensation even if the recipient is performing active military service in a combat zone at the time the payment is made. See [Military Pay Exclusion — Combat Zone Service](#) for more information on the taxability of combat zone compensation.

**Q-41: If an employee is called to active duty and receives military differential pay, how are these payments reported by the employer to the employee?**

A-41: Employers should report military differential pay on Form 1099-MISC, Box 3: Other Income. Do not use Form W-2 for these payments. Employers should not withhold FICA or income tax from these payments and the payments are not subject to FUTA taxes.

Source:

<http://www.irs.gov/newsroom/article/0,,id=129833,00.html>

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## Legislation Affecting New Employees Not Covered by Social Security

There is new federal legislation concerning documentation required for employees hired January 1, 2005 or later who occupy a job **not** covered by Social Security benefits.

Section 419(c) of Public Law 108-203, the Social Security Protection Act of 2004, requires State and local government employers to provide a statement of explanation to new employees outlining "how a pension from that job could affect future Social Security benefits to which they may become entitled."

Form SSA-1945, **Statement Concerning Your Employment in a Job Not Covered by Social Security**, is the document that employers will use to meet the requirement of the law. According to the federal legislation, the form must be signed and dated with a copy of the signed form being submitted to the New Hampshire Retirement System office. NHRS will keep the copy in the member's file.

For further details and to obtain a copy of the necessary disclosure form SSA-1945, please visit the Social Security Administration website at: <http://www.socialsecurity.gov/form1945/>.



Suggestions? How can NHRS staff work with employers to facilitate administrative duties and provide retirement information to employees? Contact: [kmcgovern@nhrs.state.nh.us](mailto:kmcgovern@nhrs.state.nh.us) 271-3351 ext. 252

